IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4138 OF 2006

Shri Sadanand Gangadhar Habbu ..Petitioner

Vs.

Shri Sidheshwar Devasthan Panch Committee, Solapur and ors. ..Respondents

Mr. A.V. Anturkar with Mr. S.B. Deshmukh for petitioner.

Dr. Virendra Tulzapurkar, Senior Counsel with Mr.G.S. Godbole for the respondent nos.1 to 7.

Mr. V.A. Thorat, Senior Counsel with Mr.Vaibhav A. Sugdare i/by M/s. Thakordas Madgavkar for respondent nos.9, 14, 16 and 17.

Mr. N.V. Walawalkar, Senior Counsel with Mr. G.H. Keluskar for respnodent nos.10 to 13 and 15.

Mr. A.A. Kulkarni with Mr. A.M. Kulkarni for respondent no.19.

Ms. V. Mhaispurkar, AGP for respondent nos.8 and 18.

WITH
WRIT PETITION NO. 4205 OF 2006

Ramappa R. Habbu and ors. ..Petitioners

Vs.

Shri Sidheshwar Devasthan Panch Committee, Solapur and ors. ..Respondents

Mr. V.A. Thorat, Senior Counsel with Mr. Vaibhav A. Sugdare i/by M/s. Thakordas Madgavkar for the petitioners.

Dr. Virendra Tulzapurkar, Senior Counsel with Mr. G.S. Godbole for respondent nos.1 to 7.

Mr. A.V. Antrukar with Mr. S.B. Deshmukh for the respondent no.13.

Mr. N.V. Walawalkar, Senior Counsel with Mr. G.H. Keluskar for respondent nos.9 to 12 and 14.

Mr. A.A. Kumbhakoni with Mr. A.M. Kularni for respondent no.16.

Ms. V. Mhaispurkar, AGP for respondent no.8.

WITH
WRIT PETITION NO. 4637 OF 2006

Chandrashekhar M. Habbu and Ors. ..Petitioners

Vs.

Shri Sidheshwar Devasthan Panch Committee, Solapur, through its President, Solapur and ors. ..Respondents

Mr. N.V. Walawalkar, Senior Counsel with Mr. G.H. Keluskar and Mr. K.K. Pandit for petitioners.

Dr. Virendra Tulzapurkar, Senior Counsel with Mr. G.S. Godbole for the respnodent nos.1 to. 7.

Mr. V.A. Thorat, Senior Counsel with Mr. Vaibhav A. Sugdare i/by M/s. Thakordas Madgavkar for respondent nos.9 to 12.

Mr. A.A. Kumbhakoni with Mr. A.M. Kulkarni for respondent no.16.

Ms. V. Mhaispurkar, AGP for respondent nos.8 and 14.

CORAM: B.H. MARLAPALLE, J.

Date of Reserve : August 08, 2006.

Date of Pronouncement : August 24, 2006.

P.C. :

1. These petitions challenge the order passed by the Joint Charity Commissioner, Latur in Inquiry (Application / Civil Misc. Application) No.30 of 2002 and duly confirmed in Civil Misc. Appeal No.110 of 2003 which came to be dismissed by the learned Additional District Judge at Solapur vide Judgment and Order dated 25/4/2006.

2. Shri Sidheshwar Devasthan and its Panch Committee filed an Application No.30 of 2002 under Section 41A read with Section 41E of the Bombay Public Trusts Act, 1950 (the Act for short) and the said application was allowed by the Joint Charity Commissioner on 23/7/2003 by the following directions:-

> "Respondents are hereby restrained from collecting amount by installing gift boxes/danpetya at any places.e. inside or outside of Gabhara or in the premises of the temple of Shri Siddheshwar Deosthan, Solapur under Section 41 E of the B.P.T. Act, 1950.
>
> Respondents are hereby further restrained from collecting or recovering more amount i.e. Rs.1.25 paise for Abhishek, Marriage and other religious ceremonies. They are further restrained from collecting amount in the name

of Abhishek, Marriage and other ceremonies without receipts issued by the trust.

It is made clear that the applicants/trustees may install gift boxes at any accessible and visible places in the temple premises in the interest of trust.

Applicants are at liberty to seek other reliefs in the form of directions under Section 41 A by instituting a separate proceeding."

This order has been confirmed by the learned Additional District Judge in Civil Misc. Appeal No.110 of 2003 filed obviously under Section 41E(5) of the Act.

3. A preliminary point was raised by me regarding the maintainability of these petitions on the ground that an alternative remedy of Civil Revision Application under Section 115 of C.P.C. is available.

. The learned counsel for the petitioners have advanced their arguments in support of entertaining the petitions, whereas the learned counsel for the respondents have submitted that the impugned order, duly confirmed by the learned Additional District Judge in an appeal, can be challenged by filing a

Revision Application under Section 115 of C.P.C. and, therefore, the writ petitions need not be entertained when such a statutory remedy is available to the petitioners.

4. Mr. Thorat the learned Senior Counsel submitted that the Joint Charity Commissioner is not a subordinate court within the meaning of Section 3 of C.P.C. and though the appeal has been decided by the District Court, the remedy of Revision Application under Section 115 of C.P.C. is not available to the petitioners. He placed reliance on the decision in the case of Saiyad Mohammad Bakar El-Edroos (dead) by LRs. vs. Abdulhabib Hasan Arab and ors. **[AIR 1998 SC 1624]** and submitted that for the proceedings/applications filed under Sections 41A to 41E of the Act, the provisions of the Civil Procedure Code are not applicable and, therefore, the remedy of Revision Application under Section 115 of the said Code cannot be invoked by the petitioners.

. Section 50A of the Act provides to the Charity Commissioner the power to frame, amalgamate or modify any schemes in the interest of proper management of a

public trust and this power can be exercised either suo motu when he has reason to believe it is necessary to do so or when two or more persons having interest in a public trust make an application to him in writing in the prescribed manner. This provision merely enables the Charity Commissioner to initiate proceedings for settling the scheme for the proper management and administration of a public trust. The said section reads as under :-

> **50A. Power of Charity Commissioner to frame, amalgamate or modify schemes**
>
> (1) Notwithstanding anything contained in section 50, where the Charity Commissioner has reason to believe that, in the interest of the proper management or administration of a public trust, a scheme should be settled for it, or where two or more persons having interest in a public trust make an application to him in writing in the prescribed manner that, in the interest of the proper management or administration of a public trust, a scheme should be settled for it, the Charity Commissioner may, if, after giving the trustees of such trust due opportunity to be heard, he is satisfied that it is necessary or expedient so to do, frame a scheme for the management or administration of such public trust.
>
> (2) Where the Charity Commissioner is of opinion that in the interest of the proper management or administration, two or more public trusts may be amalgamated by framing a common scheme for the same, he may, after -
>
> (a) publishing a note in the Official

Gazette and also if necessary in the newspaper which in the opinion of the Charity Commissioner is best calculated to bring to the notice of persons likely to be interested in the trust with a wide circulation in the region in which the trust is registered, and

(b) giving the trustees of such trusts and all other interested persons due opportunity to be heard,

frame a common scheme for the same.

(3) The Charity Commissioner may, at any time, after hearing the trustees, modify the scheme framed by him under sub-section (1) or sub-section (2).

(4) The scheme framed under sub-section (1) or sub-section (2) or modified under sub-section (3) shall, subject to the decision of the competent court under section 72, have effect as a scheme settled or altered, as the case may be, under a decree of a Court under section 50.

. One of the applicants in the said case had died during the pendency of the application and it was contended that the application was abated. The Supreme Court held that when the application was filed by two persons and on the demise of one of them, once the material was brought before the Charity Commissioner, he may on the materials or after inquiry or after giving opportunity to the person or trustee

may or may not exercise his powers depending on the facts and circumstances of each case, but his exercise of power cannot be ousted either on the death or withdrawal of any one of the applicants. It further proceeded to held as under:-

> "Hence, non-substitution or delaye substitution of such deceased person would make no difference. In this case when initiation of proceedings is in accordance with law which requires consideration for settling a scheme for the better management, in our considered opinion, the proceeding cannot culminate or be defeated on the principle of abatement as provided in Civil Procedure Code."

. Thus, it was held that the application filed under Section 50A by more than one persons cannot be dismissed as abated on the demise of one of them or withdrawal by one of the applicants and on the principle of abatement.

. The learned Senior Counsel further submitted that though the District Court is subordinate to this Court, every subordinate is not subjected to the revisional jurisdiction of this Court.

5. Sections 41A to 41E were inserted by Maharashtra 20 of 1971, in the Act. Section 41A empowers the Charity Commissioner to issue directions for proper administration of the trust, Section 41B deals with the powers of the Charity Commissioner to institute inquiries, Section 41C requires to inform to the Charity Commissioner all collections of moneys etc., Section 41D is for suspension, removal and dismissal of trustees, whereas Section 41E deals with the powers of the Charity Commissioner to act for protection of charities. The statement of objects and reasons for insertion of Sections 41A to 41E and as published in Maharashtra Government Gazette Part V Extra - 6.4.1970 read as under:-

Statement of Objects and Reasons for insertion of new Section 41-A to 41-E.

. Under the provisions of the present Bombay Public Trusts Act, 1950, the powers of the Charity Commissioner are considerably limited and hence many a time it is found by him difficult to enforce the effective working of the public trusts. Several instances of constant misappropriation and misused of trust funds and abuse of powers by trustees are noticed by the Charity Commissioner. There are no powers with the Charity Commissioner to withhold the trustees from continuing any loss and causing further damage to the trust funds and properties. For this purpose, either the

Charity Commissioner or the persons interested are required to go to a Court of Law. This takes long time. Many a time, the person interested, advised to approach the Court of Law to redress their grievances, do not approach the Court either for want of finance or, some other reasons with the result that the defaulting trustee remains in possession of trust affairs and continues causing more damage to the trust. In order to stop such trustee from doing abusive acts detrimental to the interest of the trust it is felt necessary to invest the Charity Commissioner with more powers of Civil Courts regarding removal, dismissal, suspension of trustees, issuing injunction and directions to trustees, appointing receivers etc.

. More than 18 years have passed since the Bombay Public Trusts Act, 1950 was made applicable to the then Bombay State. It is now felt that unless the Act is completely overhauled by giving necessary powers to the Charity Commissioner, it will not be possible to effectively supervise the administration and management of the public trusts. Such powers are found in Madras and Orissa Acts and the recent Act called the Charities Act, 1960 enacted by the British Parliament. Inherent powers, power of removal and dismissing the trustees, appointment of receiver, injunction, submission of budget estimates are some of the powers which the Charity Commissioners are entrusted with under Madras and Orissa Acts and English Act (Charities Act, 1960). The Charity Commissioners are Judicial Officers of the status of District Judges who were already enjoying some of the powers under the Civil Procedure Code and there is no reason why the same powers should not be given to them while administering the provisions of the Bombay Public Trust Act, 1950 and, supervising the trusts. It is felt that unless these powers are given, proper supervision of trusts will be effective. Since the Bombay Public Trusts Act, 1950 did not contain any such provisions, it has been found necessary, in view of the

past experience of 18 years, to make such provisions in the present Act and such other consequential provisions as are necessary.

Clause 29: This clause provides for insertion of six new sections in Chapter VI in order to empower the Charity Commissioner to exercise effective control over public trusts. These provisions are made for the reason that the Charity Commissioner is not able to take action directly for lack of power to meet various situations brought to his notice. Accordingly, new section 41-A empowers the Charity Commissioner to give directions to trustees, section 41-B empowers the Charity Commissioner to institute inquiries on complaints, section 41-C prohibits collection of moneys with intention of setting up of public trusts without the permission of the Charity Commissioner (moneys are collected and no account is given of such collections), section 41-D provides for suspension, removal and dismissal of trustees and section 41-E provides for empowering the Charity Commissioner to issue injunction or appoint a Receiver. In these case, appeal against the decision of the Charity Commissioner lies to the City Civil Court in Greater Bombay, and to the District Court, elsewhere. (Emphasis supplied.)

6. The Charity Commissioner and Joint Charity Commissioners are appointed under Sections 3 and 3A of the Act. A person to be appointed as Charity Commissioner or a Joint Charity Commissioner shall be one who is holding or has held a judicial office not lower in rank than that of a District Judge or a Judge of the Bombay City Civil Court or the Chief Judge of the Presidency Small Cause Court, under Section 4 of

the Act. Provided that a person to be appointed as a Joint Charity Commissioner may be one who is holding or has held a judicial office not lower in rank than that of an Assistant Judge or an Additional Chief Judge of the Court of Small Causes, Bombay or who has held the office of a Deputy Charity Commissioner for not less than five years. Section 5 of the Act deals with the appointment of Deputy and Assistant Charity Commissioners. As at present, the Deputy and Assistant Charity Commissioners as appointed under Section 5 of the Act in our State are either recruited directly or the judicial officers are deputed to the said posts. A Civil Judge, Junior Division is deputed as Assistant Charity Commissioner, whereas a Civil Judge, Senior Division is deputed as Deputy Charity Commissioner. Section 74A of the Act states that Charity Commissioner, Joint Charity Commissioner, Deputy Charity Commissioner etc. be deemed civil court within Sections 480 and 482 of Criminal Procedure Code, whereas Section 76 of the Act states that the provisions of the Code of Civil Procedure shall apply to all proceedings before the court under the Act and the term "Court" has been defined under Section 2(4) and which means in the Greater Bombay,

the City Civil Court and elsewhere, the District Court.

7. In the instant case, though the application before the Joint Charity Commissioner was filed under Section 41A read with Section 41E of the Act, the Joint Charity Commissioner registered the said application under Section 41E of the Act and allowed it partly. As noted earlier, the appeal dismissed by the learned Additional District Judge came to be filed under Section 41E(5) of the Act. Section 41E of the Act reads as under:-

> "41E. Power to act for protection of Charities
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> (1) Where it is brought to the notice of the Charity Commissioner either by the Deputy or Assistant Charity Commissioner through his report or by an application by at least two persons having interest supported by affidavit:
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> (a) that any trust property is in danger of being wasted, damaged or improperly alienated by any trustee or any other person, or
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> (b) that the trustee or such person threatens or intends to remove or dispose of that property,
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> the Charity Commissioner may by order grant a

temporary injunction or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, remove or disposition of such property, on such terms as to the duration of injunction, keeping an account, giving security, production of the property or otherwise as he thinks fit.

(2) The Charity Commissioner shall in all such cases, except where it appears that the object of granting injunction would be defeated by delay, before granting an injunction, give notice of the facts brought to his notice to the trustee, or the person concerned.

(3) After hearing the trustee or person concerned and holding such inquiry as he thinks fit, the Charity Commissioner may confirm, discharge or vary or set aside the order of injunction or pass any other appropriate order.

(4) In case of disobedience or breach of any injunction, any of its terms or any order passed under this section, the Charity Commissioner may apply to the Court, which may, after hearing the Charity Commissioner and the party affected, order the property of such person, guilty of such disobedience or breach to be attached, and may also order such person to be detained in jail for a term not exceeding six months. No attachment under this sub-section shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the property attached may be sold, and out of the proceeds, the Court may award such compensation as it thinks fit, and shall pay the balance, if any, to the person entitled thereto, and thereupon, the temporary injunction granted, or any order passed, by the Charity Commissioner, under this section, if in force shall stand vacated, or as the case may be cancelled.

(5) A trustee or a person against whom the order of injunction or any other order under

this section is passed may, within ninety days of the date of communication of such order, appeal to the Court against such order.

(6) The order of the Court attaching the property of such person or detaining such person in civil prison shall be a decree appealable to the High Court.

(7) The order of the Charity Commissioner shall, subject to any order of the Court or in appeal, be final.

. Subsection (4) provides for attachment of the property and also detention in jail for a term not exceeding six months of such person found to be guilty of such disobedience or breach and the said order can also be challenged in an appeal under Section 41E (5) but as per subsection (6) of Section 41E, the order passed by the court under subsection (5) attaching the property of such person or detaining such person in civil prison shall be a decree appealable to the High Court and thus when a remedy of appeal is available, a writ petition cannot be entertained. However, if the order passed by the court in an appeal does not fall within the ambit of subsection (6) of Section 41E, it cannot be challenged in an appeal. Section 76 of the Act states that save in so far as they may be inconsistent with anything contained in this Act, the

provisions of the Code of Civil Procedure, 1908, shall apply to all proceedings before the court under this Act. Whereas Section 73 of the Act states that in holding inquiries under this Act, the officer holding the same shall have the same powers as are vested in courts in respect of the following matters under the Code of Civil Procedure, 1908 in trying a suit -

(a) proof of facts by affidavits,

(b) summoning and enforcing the attendance of any person and examining him on oath,

(c) ordering discovery and inspection, and compelling the production of documents,

(d) issuing of commissions.

. Thus, to all the proceedings before the court i.e. the District Court, the provisions of the Civil Procedure Code apply under Section 76 and to the inquiries held by the officers like the Assistant Commissioner, Deputy Commissioner, Joint Commissioner etc. the provisions of C.P.C. in trying a suit shall be applicable to a limited extent. Section 74 states that all inquiries and appeals under this Act shall be deemed to be judicial proceedings within the meaning of Sections 193, 219 and 228 of the Indian Penal Code.

8. Under the Payment of Wages Act, 1936 an appeal under Section 76 of the said Act lies before the District Court and such an appeal lies against the order passed by the Competent Authority under Section 15(3) of the said Act. An issue arose in the case of Debidutt Dube vs. Central India Electrical Supply Co. Ltd. **[AIR (32) 1945 Nagpur 244]** as to whether the order passed by the District Court as an Appellate Court under Section 76 of the Payment of Wages Act could be challenged by filing a revision application under Section 115 of the C.P.C. The court answered the issue in the affirmative and held that the order of the District Court was revisable under Section 115 of C.P.C.

. In the case of Avoch Thevar vs. Chummar **[AIR 1957 Kerala 171]**, a Division Bench considered the issue as to whether against the order passed under Section 7 of Charitable and Religious Trust Act, 1920, a revision to the High Court under Section 115 of the C.P.C. was maintainable. Section 7 (1) of the Charitable and Religious Trust Act, 1920 reads as under:-

> "Save as hereinafter provided in this Act, any trustee of an express or constructive trust created or existing for a public purpose of a charitable or religious nature may apply by petition to the court within the local limits of whose jurisdiction any substantial part of the subject-matter of the trust is situate, for opinion, advice or direction of the court on any question affecting the management or administration of the trust property, and the court shall give its opinion, advice or direction as the case may be, thereon, provided that the court shall not be bound to give such opinion, advice or direction on any question which it considers to be a question not proper for summary disposal."

. Whereas Section 12 of the said Act reads as under:-

> "No appeal shall lie from any order passed or any opinion, advice or direction given under this Act."

. The first question that was considered was how far the revision petitions could be maintainable. The Division Bench held that though Section 12 had shut down the remedy of an appeal, there was nothing in the Act prohibiting the remedy of revision under Section 115 of C.P.C. and, therefore, it was held that revision to the High Court was maintainable.

. In the case of Onkar Dutta Shastri vs. The

Bihar Hindu Religious Trust Board, Patna **[AIR 1960 PATNA 164]**, an appeal under Section 70(2)(b) of the Bihar Hindu Religious Trust Act, 1950 was maintainable before the District Judge. It was contended that the District Judge being a persona designata, his order passed under Section 70(2)(b) of the said Act could not be challenged by filing a revision application under Section 115 before the High Court. The Patna High Court referred to a Division Bench decision of the Calcutta High Court in the case of Gobinda Chandra Saha vs. Rashmoni Dassya **[AIR 1943 Cal 470]** and reproduced the following observations therein:-

> "This section empowers a District Judge to determine certain matters of a judicial character which lie outside his ordinary jurisdiction under the law. If the intention of the Legislature is that the District Judge should determine the matter as a Court and the effect of the provision is merely to enlarge his ordinary jurisdiction, it goes without saying that the normal incidents of such jurisdiction including the rights of revision and appeal from its orders would remain intact."

. The Patna High Court further observed thus:-

> "If on the other hand the authority is to be exercised by the District Judge not as a Court but as persona designata obviously its decisions could not be revised by this Court.

> When the jurisdiction is given to a judicial officer by name it is no doubt a difficult question to decide as to whether the jurisdiction is to be exercised by the person or by the Court itself over which he presides.

. In the case of Sanjay Dinkar Kulkarni vs. Shankerappa Ganappa Pasarkar **[1971 BCI (0) 27]** it has been held that the order passed by the Collector under Section 23(2) of the Mamlatdars' Courts Act is an order of a court and, therefore, the said order could be challenged by filing a revision application under Section 115 of C.P.C. The same view was earlier laid down by the Mysore High Court in the case of Narayan Nagappa Hegde vs. Shankar Narasimha Bhatta **[AIR 1966 Mysore 5]** wherein a learned Single Judge held that the jurisdiction of the Mamlatdar under the Bombay Mamlatdars' Courts Act, 1906 was identical with that of the Civil Code except that his decision was subject to the final decision of the competent Civil Court and considering the definition of a "revenue court" in Section 5(2) of the C.P.C., there was no doubt that the court of Mamlatdar, the Collector or Assistant Collector under the Act was a Civil Court. Consequently, it was held that the orders passed under Section 23(3) of the Mamlatdars' Courts Act could be

challenged by filing a revision application under Section 115 of C.P.C.

. A Full Bench of the Madhya Pradesh High Court in the case of Ayodhya Prasad vs. Union of India and nar. **[AIR 1983 Madhya Pradesh 39]** held that while exercising revisional powers under Section 139 of the Madhya Pradesh Municipalities Act, 1961, the District Judge functions as a Court and not as persona designata in as much as the jurisdiction is conferred under the Act on the Court itself. Though subsection (5) of Section 139 of the M.P. Municipalities Act, 1961 stated that the order passed by the District Court would be final and there was no further appeal, the Full Bench held that the scheme of Section 139 did not exclude the power of revision, being an order of a Court subordinate to the High Court and the order being a case decided, a revision against such order was tenable under Section 115 of C.P.C.

. In the case of Shyam Sunder Agarwal & Co. vs. Union of India **[(1996) 2 SCC 132]**, it has been held that against the appellate order passed under Section 39 of the Arbitration Act, 1940 and though it was made

final, such an appellate order could be challenged in a revision application under Section 115 of C.P.C.

The Apex Court held:

> "The proceedings before the appellate court under Section 39 of the Arbitration Act are judicial proceedings and the Judge exercises a power under Section 39 as a judicial officer. Section 115 of Civil Procedure Code confers revisional powers on the High Court in respect of a decision of a court subordinate to it if no appeal lies against such decision of the subordinate court provided any of the three clauses under Section 115 of Civil Procedure Code is fulfilled."

9. This court (R.M. Lodha,J.) in the case of Gurucharansing Hardayalsing Sethi vs. Narhari Laxman Shinde and ors. **[1996(1) Mh.L.J. 869]** held that the Motor Accident Claims Tribunal constituted under the Motor Vehicles Act, 1988 is a court subordinate to the High Court for all intents and purposes. It has trappings of Civil Court and is amenable to revisional jurisdiction of the High Court under Section 115 of the Civil Procedure Code. An order passed by the Tribunal rejecting application for setting aside the ex parte award can be challenged by filing a revision under Section 115 of C.P.C. and writ petition under Article 226 read with Article 227 of the Constitution

need not be entertained. In the case of Sarupchand Multanchand Sancheti (dead) through LRs. vs. Gulabchand Jaideo Agrawal (dead) through LRs. **(Writ Petition No.2330 of 1998) decided on 26/6/1998**, the Aurangabad Bench of this Court (R.M. Lodha,J.) while dealing with the eviction order passed under the Bombay Rent Control Act stated in para 6 as under:-

> "Besides, it may be observed that the extra ordinary jurisdiction under Article 227 of the Constitution of India does not deserve to be invoked when the impugned judgments and decrees apparently are amenable to revisional jurisdiction under section 115 of Code of Civil Procedure. In Vora Abbasbhai Alimahomed vs. Haji Gulamnabi Haji Safibhai (AIR 1964 SC 1341) the Apex Court while construing the provisions of the Bombay Rent Control Act held that the power of revision under section 115 of CPC of the High Court is not excluded when the judgment and decree passed by the trial court under section 28 and by the appeal court under section 29 of the Bombay Rent Control Act are under challenge. The remedy of revision provided under section 115 of CPC cannot be allowed to be by-passed by permitting a party to invoke extra ordinary jurisdiction."

10. In the order dated 18/7/2006 passed in Writ Petition No.3334 of 2006 a similar issue arose before me and after referring to the decisions in the case of Shyam Sunder Agarwal (Supra), ITI Ltd. vs. Siemens Public Communications Network Ltd. **[(2002) 5 SCC**

510], Shiv Shakti Co-op. Housing Society, Nagpur **[AIR 2003 SC 2434]** and Sadhana Lodh vs. National Insurance Co. Ltd. **[AIR 2003 SC 1561]** and a decision of this court in the case of Chandu Jagannath Ambekar vs. Digamber Kisanrao Kulkarni **[2004 (4) Mh.L.J. 69 (D.B.)]**, it has been held that against the award passed by the Co-operative Court under Section 91 and confirmed or set aside by the Co-operative Appellate Court under Section 97 of the Maharashtra Co-operative Societies Act, 1960, a Writ Petition under Article 227 of the Constitution need not be entertained when an alternative remedy of filing Civil Revision Application under Section 115 of C.P.C. is available. The issue of finality to the order of the Charity Commissioner, subject to the order of the court in appeal, as stated in subsection (7) of Section 41E of the Act, stands answered by relying upon the decision in the case of Shyam Sunder Agarwal (Supra).

11. In the instant petitions the order passed by the Joint Charity Commissioner under Section 41E of the Act has been confirmed by the learned Additional District Judge in an appeal under subsection (5) of the said Act and the learned District Judge has acted

as a court and subordinate to this Court. The Joint Charity Commissioner while entertaining an application under Section 41E acts as a quasi judicial authority and has the trappings of a Civil Court. In this regard we may also refer to the statement of objects and reasons for insertion of Section 41A to 41E as reproduced hereinabove and more particularly the underlined portion. The order passed by the Joint Charity Commissioner is appealable before the District Court under subsection (5) of Section 41E excluding the order of attachment or civil imprisonment. The decisions referred to hereinabove leave no doubt in my mind that the impugned order can be challenged by filing a revision application under Section 115 of C.P.C. and when a statutory remedy is available, a Writ Petition under Article 227 or styled as filed under Article 226 read with Article 227 of the Constitution need not be entertained. Hence, I answer the preliminary issue against the petitioners and hold that the petitioners ought to be relegated to the alternative remedy of filing a Civil Revision Application under Section 115 of C.P.C.

15. The petitions are, therefore, disposed with

liberty to file Civil Revision Application under Section 115 of C.P.C. The order of status quo granted earlier will continue to operate for a further period of three weeks so as to enable the petitioners to file Civil Revision Applications before this Court.

. Annexures to the petition memos are allowed to be withdrawn.

(B.H. Marlapalle,J.)